

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 03-014-15-1-4-01590-16
Petitioner: RAW Corporation
Respondent: Bartholomew County Assessor
Parcel: 03-07-20-140-003.200-014
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. RAW Corporation filed an appeal with the Bartholomew County Assessor challenging the 2015 assessment of its mini-warehouse located at 120 Market Street in Hope. The Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 notice of determination reducing the assessment to the following:

Land: \$19,800 Improvements: \$48,800 Total: \$68,600

2. RAW timely filed a Form 131 petition with the Board and accepted our small claims procedural rules. On January 31, 2018, Jacob Robinson, our designated administrative law judge (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the subject property.
3. RAW appeared by Janice Whittington, its Secretary. Virginia R. Whipple of GnA Assessment Professionals, Inc., appeared as a local government representative for the Assessor. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. A digital recording of the hearing
 - b. Petitioner’s Ex. 1: RAW Corporation Transaction Detail by Account, January through December 2013
Petitioner’s Ex. 2: 2017 Property Record Card for 12999 US Highway 31 N.
Petitioner’s Ex. 3: 2017 Property Record Card for 9823 N. St. Rd. 9 (Rear)
 - c. Respondent’s Ex. A: Statement of Professionalism
Respondent’s Ex. B: Resumes of Gordon Lewis Wilson and Virginia R. Whipple
Respondent’s Ex. C: 2014 Property Record Card for subject

- Respondent's Ex. D: property (Page 1 of 2)
 - Respondent's Ex. D: 2015 Property Record Card for subject property
 - Respondent's Ex. E: Aerial photograph of subject property
 - Respondent's Ex. F: Aerial overview of RAW Corporation's properties
 - Respondent's Ex. G: Petitioner Submitted Exhibits Summary
 - Respondent's Ex. H: RAW Corporation Mini Warehouse Price/Sq. Ft Analysis
- d. Board's Exhibit A: Form 131 Petition and attachments
 - Board's Exhibit B: Notice of Hearing
 - Board's Exhibit C: Hearing Sign-In Sheet
- e. The record also includes (1) all documents filed by the parties, (2) all orders and notices issued by the Board or the ALJ, and (3) these Findings and Conclusions.

OBJECTIONS

- 5. The Assessor objected to the admission of Petitioner's Exhibit 1 because RAW failed to exchange the exhibit before the hearing despite his timely request. RAW countered that it had previously produced the document at the PTABOA hearing and argued that it is therefore admissible. Our ALJ took the objection under advisement.
- 6. Although our small claims procedural rules do not require parties to exchange documentary evidence prior to hearing, they do allow parties to request the exchange of such evidence at least five business days before a hearing. *See* 52 Ind. Admin. Code 3-1-5(d). Such a request allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues. Failure to comply with an exchange request may serve as grounds to exclude evidence that was not timely provided. *See* 52 IAC 3-1-5(f).
- 7. Here, we find that the Assessor was not prejudiced by RAW's failure to exchange. Although the Assessor timely requested the exchange of documentary evidence, he admitted that RAW had previously produced the document at the PTABOA hearing. Thus, the Assessor had an opportunity to review the document and familiarize himself with its contents prior to the hearing. We therefore overrule the Assessor's objection and admit Petitioner's Exhibit 1.

BURDEN OF PROOF

- 8. Generally, a taxpayer seeking review of an assessment must prove that the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and shifts the burden to the assessor to prove that the assessment is correct in specified circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. Ind. Code § 6-1.1-15-17.2(a), (b). But the burden shifting statute may not apply if the assessment under appeal was based on structural improvements, zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c)

9. Here, the subject property's assessment increased by more than 5% between 2014 and 2015, but the increase was primarily due to the assessment of a new storage facility RAW built on the property. The burden-shifting rule therefore does not apply, and RAW has the burden of proof.

SUMMARY OF CONTENTIONS

10. RAW's case:
 - a. RAW purchased the subject property as a vacant lot and built a storage facility on it. To establish the value of its storage facility, RAW relied on a QuickBooks printout allegedly showing actual construction costs of about \$48,000. Whittington testified that the construction costs included around \$3,000 to cure some defective concrete work. She also claimed that some of the expenses included in the total were for incidental costs, and argued that removing these incidental costs further reduced the total construction costs to around \$39,500. Additionally, Whittington asserted that the actual construction costs were lower than the appraised value of the improvements, but RAW did not offer any appraisals as evidence. *Pet'r Ex. 1; Whittington testimony.*
 - b. RAW also complained that the subject property's \$45,000/acre base rate for land was too high given its location and lack of utilities. Whittington argued that RAW's storage facility is on the outskirts of town, not in the downtown area, which decreases the land's value. She also claimed that the property currently has no water or electric hookups, although she admitted that RAW could install a water hookup. *Whittington testimony.*
 - c. To value the subject property's land, RAW offered an assessment comparison approach relying on two comparable properties. RAW provided the 2017 Property Record Card ("PRC") for 12999 N. US Highway 31, a property owned by Greene's Holdings LLC. Greene's used the property as a commercial garage and auto service shop, and its land is assessed at \$35,000/acre. RAW also submitted the 2017 PRC for 9823 N. St. Rd. 9, a property owned by Tom's Commercials, LLC. This property has two separate land valuations: \$13,500/acre for usable undeveloped land and \$31,500/acre for the primary land where the storage building sits. It is also located near downtown and demonstrates that RAW's land—located in a fringe area—is overvalued. RAW ultimately claimed its land and improvements together should be valued between \$49,000 and \$50,000. *Pet'r Exs. 2, 3; Whittington testimony.*
11. The Assessor's case:
 - a. The Assessor and Whipple certified that they completed their work in accordance with generally accepted appraisal principles and the Uniform Standards of Professional Appraisal Practice ("USPAP"). The Assessor employed the income approach to value the subject property and relied on RAW's actual rents. RAW's

- storage units rent for \$70 each, and there are 12 units on the property.¹ The Assessor assumed a 15% vacancy rate, a 10% expense rate, 2% for reserves, and the 11% cap rate applicable to properties located in the town of Hope. This produced a total value of \$68,600 for the subject property. *Resp't Ex. A; Whipple testimony.*
- b. The Assessor claimed that his price per square foot analysis indicated that RAW's property is valued in the lower half of all mini warehouses in Bartholomew County and of similarly graded warehouses in Hope. *Resp't Ex. H; Whipple testimony.*
 - c. Regarding RAW's evidence, the Assessor argued that RAW's construction costs are incomplete and are not a good indication of the property's value. The only document showing actual costs is a printout from QuickBooks that lists several issued checks, but it does not explain which specific costs RAW paid with these checks. And RAW provided no contractor's receipts, estimates, or bids demonstrating that the QuickBooks printout represented the true construction costs for the building. *Pet'r Ex. 1; Whipple testimony.*
 - d. As for RAW's complaint about the subject property's \$45,000/acre base rate for land being too high, the Assessor maintained that he valued the subject property's 0.20 acres of land at the same base rate as other primary land in Hope.² Additionally, the Assessor noted that RAW purchased the land for \$20,000 in 2012 while its land assessment for 2015 was only \$19,800. *Resp't Ex. D; Whipple testimony.*
 - e. The Assessor also claimed that RAW's comparable properties are not truly comparable to the subject property. The PTABOA determined a land value for 9823 N. St. Rd. 9 after categorizing the land as both secondary land and usable undeveloped land. In contrast, RAW's property is classified as primary land, which is valued at a higher rate. And RAW's property is located in Hawcreek Township, while 9823 N. St. Rd. 9 is in German Township. RAW also failed to explain how its second comparable, 12999 N. US Highway 31, was in fact comparable to the subject property. That property is at least located in Hawcreek Township, but unlike the subject property, the Assessor may have mistakenly valued it as industrial land, which has a lower land rate. *Resp't Exs. D, G; Pet'r Exs. 2, 3; Whipple testimony.*

ANALYSIS

12. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current

¹ The Assessor did not specify the length of time the \$70 rental rate covered (e.g., monthly, quarterly).

² The Assessor adjusted the subject property's \$45,000/acre base rate by a factor of 2.20 for an adjusted rate of \$99,000/acre. *Resp't Ex. D.*

use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.

13. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how their evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for a 2015 assessment was March 1, 2015. I.C. § 6-1.1-4-4.5(f).
14. As discussed above, RAW has the burden of proof. RAW attempted to demonstrate the correct assessment for its improvements by offering the actual construction costs for its storage facility. Although actual construction costs can be relevant to a property’s true tax value, RAW failed to adequately support its \$39,500 valuation request. The one-page QuickBooks printout RAW offered is only a partial accounting and provides insufficient detail regarding the costs RAW incurred to build its storage facility. And Whittington’s testimony failed to fill in the gaps. Thus, RAW’s evidence of actual construction costs is unpersuasive.
15. Even if RAW had substantiated all of its costs, it incurred those costs in 2013 and therefore needed to relate them to the 2015 valuation date. Because RAW failed to do so, even verified construction costs would not have been probative evidence of the storage facility’s market value-in-use. *See Long*, 821 N.E. 2d at 471.
16. RAW also presented an assessment comparison relying on two purportedly comparable properties in an attempt to show that its land assessment was not in line with other assessments. Taxpayers may introduce this type of evidence to prove market value-in-use in a proceeding concerning commercial property assessments, with preference given to comparable properties located in the same taxing district or within two (2) miles of the taxing district’s boundary. Ind. Code § 6-1.1-15-18(c)(2).
17. A party offering assessment data must also show the properties are comparable using generally accepted appraisal and assessment practices. I.C. § 6-1.1-15-18(c); *see also Long*, 821 N.E.2d at 470-71. Conclusory statements that a property is “similar” or “comparable” do not suffice. Instead, taxpayers must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. Taxpayers must similarly explain how relevant differences affect values. *Id.*
18. Here, RAW’s presentation regarding its two purportedly comparable properties failed to provide sufficient information to demonstrate comparability with the subject property.

And RAW did not even attempt to make adjustments for any relevant differences between its property and the comparable properties. RAW's evidentiary presentation therefore falls well short of providing the level of analysis contemplated by *Long*. Furthermore, the land rates RAW used for comparison were pulled from the comparable property's 2017 PRCs. RAW therefore needed to relate those values back to the 2015 valuation date. Consequently, RAW's assessment comparison approach lacks probative value.

19. Because RAW failed to offer any probative evidence to show the subject property's market value-in-use, it failed to make a prima facie case for a lower assessment. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, we need not analyze the Assessor's evidence.

FINAL DETERMINATION

20. In accordance with the above findings and conclusions, we find for the Assessor and order no change to RAW's 2015 assessment.

ISSUED: April 25, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.